

1 **NONPROFIT ENTITY RECEIPT OF GOVERNMENT MONEY**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ronda Rudd Menlove**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses nonprofit entity receipt of state money.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ addresses audits of nonprofit entities;
- 14 ▶ requires written agreements for grants to nonprofit entities;
- 15 ▶ enacts the Nonprofit Entity Receipt of State Money Act, including:
 - 16 • defining terms;
 - 17 • imposing requirements on a nonprofit entity's receipt of state money; and
 - 18 • authorizing a state entity to seek return of state money if the nonprofit entity

19 fails to comply with the requirements; and

- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **51-2a-102**, as last amended by Laws of Utah 2007, Chapter 170

28 ENACTS:

29 **51-2a-204**, Utah Code Annotated 1953

- 30 **63J-9-101**, Utah Code Annotated 1953
- 31 **63J-9-102**, Utah Code Annotated 1953
- 32 **63J-9-201**, Utah Code Annotated 1953
- 33 **63J-9-202**, Utah Code Annotated 1953

35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **51-2a-102** is amended to read:

37 **51-2a-102. Definitions.**

38 As used in this chapter:

39 (1) "Accounting reports" means an audit, a review, a compilation, or a fiscal report.

40 (2) "Audit" means an examination that:

41 (a) analyzes the accounts of all officers of the entity having responsibility for the care,
42 management, collection, or disbursement of money belonging to it or appropriated by law or
43 otherwise acquired for its use or benefit;

44 (b) is performed in accordance with generally accepted government auditing standards,
45 or for nonprofit corporations described in Subsection (6)(f), in accordance with generally
46 accepted auditing standards; and

47 (c) conforms to the uniform classification of accounts established or approved by the
48 state auditor or any other classification of accounts established by any federal government
49 agency.

50 (3) "Audit report" means:

51 (a) the financial statements presented in conformity with generally accepted accounting
52 principles;

53 (b) the auditor's opinion on the financial statements;

54 (c) a statement by the auditor expressing positive assurance of compliance with state
55 fiscal laws identified by the state auditor;

56 (d) a copy of the auditor's letter to management that identifies any material weakness in
57 internal controls discovered by the auditor and other financial issues related to the expenditure

58 of funds received from federal, state, or local governments to be considered by management;
59 and

60 (e) management's response to the specific recommendations.

61 (4) "Compilation" means information presented in the form of financial statements
62 presented in conformity with generally accepted accounting principles that are the
63 representation of management without the accountant undertaking to express any assurances on
64 the statements.

65 (5) "Fiscal report" means providing information detailing revenues and expenditures of
66 all funds using forms provided by the state auditor.

67 (6) "Governing board" means:

68 (a) the governing board of each political subdivision;

69 (b) the governing board of each interlocal organization having the power to tax or to
70 expend public funds;

71 (c) the governing board of any local mental health authority established under the
72 authority of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

73 (d) the governing board of any substance abuse authority established under the
74 authority of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

75 (e) the governing board of any area agency established under the authority of Title
76 62A, Chapter 3, Aging and Adult Services;

77 (f) the governing board of any nonprofit corporation that receives:

78 (i) at least 50% of its funds from federal, state, and local government entities through
79 contracts; or

80 (ii) an amount from state entities that is equal to or exceeds the amount specified in
81 Subsection 51-2a-201(1) that would require an audit to be made by a competent certified public
82 accountant;

83 (g) the governing board of any other entity established by a local governmental unit
84 that receives tax exempt status for bonding or taxing purposes; and

85 (h) in municipalities organized under an optional form of municipal government, the

86 municipal legislative body.

87 (7) "Review" means performing inquiry and analytical procedures that provide the
88 accountant with a reasonable basis for expressing limited assurance that there are no material
89 modifications that should be made to the financial statements for them to be in conformity with
90 generally accepted accounting principles.

91 (8) "State entity" means a department, commission, board, council, agency, institution,
92 officer, corporation, fund, division, office, committee, authority, laboratory, library, unit,
93 bureau, panel, or other administrative unit of the state.

94 Section 2. Section 51-2a-204 is enacted to read:

95 **51-2a-204. Grants to nonprofit corporations -- Reporting to the state auditor.**

96 (1) A state entity that grants money to a nonprofit corporation shall enter into a written
97 agreement with the nonprofit corporation that requires the nonprofit corporation to:

98 (a) disclose whether:

99 (i) it met or exceeded the requirements listed in Subsection 51-2a-102(6)(f) in the
100 previous fiscal year of the nonprofit corporation; and

101 (ii) it anticipates meeting or exceeding the requirements listed in Subsection
102 51-2a-102(6)(f) in the fiscal year the grant is issued; and

103 (b) comply with the requirements of Title 63J, Chapter 9, Nonprofit Entity Receipt of
104 State Money Act.

105 (2) If the nonprofit corporation discloses to the state entity that it meets or exceeds the
106 requirements listed in Subsection 51-2a-102(6)(f) as described in Subsection (1), the state
107 entity shall notify the state auditor.

108 Section 3. Section 63J-9-101 is enacted to read:

109 **CHAPTER 9. NONPROFIT ENTITY RECEIPT OF STATE MONEY ACT**

110 **Part 1. General Provisions**

111 **63J-9-101. Title.**

112 This chapter is known as the "Nonprofit Entity Receipt of State Money Act."

113 Section 4. Section 63J-9-102 is enacted to read:

114 **63J-9-102. Definitions.**

115 As used in this chapter:

116 (1) "Bylaws" means the one or more codes of rules, other than the articles of
117 incorporation, adopted for the regulation or management of the affairs of a nonprofit entity
118 irrespective of the one or more names by which the codes of rules are designated.

119 (2) (a) "Grant" means the furnishing by a state entity of state money to a nonprofit
120 entity.

121 (b) "Grant" does not include a contract between a state entity and a nonprofit entity to
122 purchase goods or services from the nonprofit entity that was subject to the state procurement
123 process provided in Title 63G, Chapter 6a, Utah Procurement Code.

124 (3) "Nonprofit entity" means an entity that:

125 (a) is operated primarily for a scientific purpose, educational purpose, religious
126 purpose, charitable purpose, or similar purpose in the public interest;

127 (b) is not organized primarily for profit; and

128 (c) no part of the net earnings of which inures to the benefit of any private shareholder
129 or individual holding an interest in the entity.

130 (4) "State entity" means a department, commission, board, council, agency, institution,
131 officer, corporation, fund, division, office, committee, authority, laboratory, library, unit,
132 bureau, panel, or other administrative unit of the state.

133 (5) (a) "State money" means money that is owned, held, or administered by a state
134 entity and derived from state fee or tax revenues.

135 (b) "State money" does not include contributions or donations received by a state
136 entity.

137 Section 5. Section **63J-9-201** is enacted to read:

138 **Part 2. Provision of State Money**

139 **63J-9-201. Conditions for providing state grant money to a nonprofit entity.**

140 A state entity may not provide a nonprofit entity state money through a grant, including
141 a pass-through funding grant, unless:

- 142 (1) the state entity enters into a written agreement with the nonprofit entity;
- 143 (2) the written agreement described in Subsection (1) requires the nonprofit entity to
- 144 provide the state entity an itemized report at least annually detailing the expenditure of the state
- 145 money; and
- 146 (3) at the time of receipt of the state money the nonprofit entity has:
- 147 (a) bylaws that provide for:
- 148 (i) the financial oversight of the state money; and
- 149 (ii) compliance with state laws related to the state money;
- 150 (b) procedures for the governing board of the nonprofit entity to designate an
- 151 administrator who manages the state money; and
- 152 (c) procedures for the governing board to dismiss the administrator described by
- 153 Subsection (3)(b).

154 Section 6. Section **63J-9-202** is enacted to read:

155 **63J-9-202. Nonprofit entity's return of state money.**

156 The state entity that provides a nonprofit entity state money in accordance with Section

157 63J-9-201 may require the nonprofit entity to return to the state entity an amount of money that

158 is equal to the state money that is expended in violation of Section 63J-9-201 if the nonprofit

159 entity fails to comply with the written agreement, bylaws, and procedures required by Section

160 63J-9-201 during the time period that the nonprofit entity holds or expends the state money.